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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,976	03/18/2004	Amit Ganesh	50277-2502	7843

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EXAMINER	
FLEURANTIN, JEAN B	

ART UNIT	PAPER NUMBER
2162	

MAIL DATE	DELIVERY MODE
11/15/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/804,976	GANESH ET AL.	
	Examiner	Art Unit	
	JEAN B. FLEURANTIN	2162	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *02 August 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-16,18-31 and 33-40* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 3-16, 18-31 and 33-40* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. This is in response to Applicant(s) arguments filed on 8/02/2007.

The following is the current status of claims:

Claims 2, 17 and 32 have been canceled.

Claims 1, 3-16, 18-31 and 33-40 remain pending for examination.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 16 and 18-30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As set forth in MPEP 2106:

As per independent claim 16

The independent claim 16 is directed to a computer-readable medium carrying one or more sequence of one or more instructions, in which performing database recovery after a crash of an instance of a database. The claimed steps are not being performed by any form of computer hardware component. Therefore, the mechanism for sing multiple recovery servers, a parallel transaction recovery, increases the scalability of the recovery process by allowing dead transactions to be recovered in parallel as the purpose of the invention. The claimed, "medium" fails to fall with one of four statutory categories of invention, process, machine, manufacture and composition, and is software per se.

The dependent claims are rejected under the same rational.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3-16, 18-31 and 33-40 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-12 and 23-31 of U.S. Patent No. 5,850,507. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to the U.S. Patent No. 5,850,507 claim(s) 1 to interchangeably "updating the transaction information to indicate that the one or more transactions that were active when the instance crashed are dead" to "determining statistical data about the said-plurality of dead transactions" in order to provide a method for recovering after a crash of an instance of a database; see U.S. Patent No. 5,850,507.

Claim(s) 1 of U.S. Patent No. 5,850,507 contain(s) every element of claim 1 of instant application serial No. 10/804,976 and thus anticipate the claim 1 of the instant application. Claim 1 of the instant application therefore is not patently distinct from the earlier patent application claim 1 and as such as are unpatentable over obvious-type double patenting. A later patent/application claim is not patentably distinct from an earlier claim if the later claim is anticipated by the earlier claim.

Instant Application 10/804,976	USPNo. 5,850,507
A method for performing database recovery after a crash of an instance of a database, wherein multiple transactions were active when the instance crashed, the method comprising: identifying a plurality of dead transactions; determining statistical data about the said-plurality of dead transactions; determining that a particular number of recovery servers should be used to recover the said-plurality of dead transactions based on the statistical data; and recovering the said-plurality of dead transactions using the said-particular number of recovery servers by executing the particular number of recovery servers in parallel.	A method for recovering after a crash of an instance of a database, wherein one or more transactions were active when the instance crashed, the method comprising the computer implemented steps of: finding transaction information that corresponds to one or more transactions that existed in the instance; determining, based on the transaction information, whether the one or more transactions that existed in the instance were active when the instance crashed; if the one or more transactions were active when the instance crashed, then updating the transaction information to indicate that the one or more transactions that were active when the instance crashed are dead; making the database available to users after updating the transaction information and before undoing all of the updates performed by the one or more transactions that were active when the instance crashed; executing a new transaction; when the new transaction requests access to a resource, determining that the resource belongs to a particular transaction that was active when the instance crashed; and in response to determining that the resource belongs to the particular transaction that was active when the instance crashed, undoing one or more changes made by the particular transaction.

"A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or anticipated by, the earlier claim. In re Longi, 759 F.2d at 896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus)." ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

"Claim 1 and Claim 1 are generic to the species of invention covered by claim 1 of the patent. Thus, the generic invention is "anticipated" by the species of the patented invention. Cf., Titanium Metals Corp. v. Banner, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985) (holding that earlier species disclosure in the prior art defeats any generic claim). This court's predecessor has held that, without a terminal disclaimer, the species claims preclude issuance of the generic application. In re Van Ornum, 686 F.2d 937, 944, 214 USPQ 761, 767 (CCPA 1982); Schneller, 397 F.2d at 354. Accordingly, absent a terminal disclaimer, claims 1 and were properly rejected under the doctrine of obviousness-type double patenting." (In re Goodman (CAFC) 29 USPQ2d 2010 (12/3/1993).

All the pending claims are rejected under the same rational.

Response to Arguments

Applicant's arguments, filed on 08/02/2007 with respect to all pending claims have been fully considered and are persuasive.

However, claims would be allowable if applicant overcome the nonstatutory obviousness-type double patenting rejection(s) and the 35 USC 101 rejection(s) (claims 16 and 18-30).

CONTACT INFORMATION

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEAN B. FLEURANTIN whose telephone number is 571-272-4035. The examiner can normally be reached on 7:05 to 4:35.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOHN E BREENE can be reached on 571-272-4107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jean Bolte Fleurantin
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Technology Center 2100